

FILED

FEB 21 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

RICHARD I. LAING,

Plaintiff - Appellant,

v.

CHRISTIE GALLEGOS, Unit Director of
Ward-B, Oregon State Hospital; et al.,

Defendants - Appellees.

No. 04-35945

D.C. No. CV-02-00909-AJB/DCA

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Richard Laing, committed to Oregon State Hospital after being found guilty except for insanity of second degree assault, appeals pro se from the district court's judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of the Fourth and Fourteenth Amendments. We grant Appellee's motion to dismiss the appeal.

Appellee has informed this court that appellant failed to return from an unsupervised afternoon pass while a patient at Oregon State Hospital and his current whereabouts are unknown. Accordingly, dismissal is proper. *See Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970) (holding that a fugitive is disentitled from calling upon the resources of the court for determination of his claims); *see also Conforte v. Commissioner*, 692 F.2d 587, 589-90 (9th Cir. 1982) (extending the fugitive disentitlement doctrine to civil proceedings).

This appeal is dismissed with prejudice subject to the following qualification: if appellant surrenders to authorities within 42 days of the filing date of this order, appellant may move for reinstatement of this appeal. *See United States v. Freelove*, 816 F.2d 479, 480 (9th Cir. 1987).

DISMISSED